

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CHRISTOPHER BRIAN ROMAN,

Petitioner,

v.

THE SUPERIOR COURT OF LOS
ANGELES COUNTY,

Respondent;

THE PEOPLE,

Real Party in Interest.

No. B164733

(Super. Ct. No. KA058966)
(Phillip Gutierrez, Judge)

ORDER MODIFYING OPINION
[NO CHANGE IN JUDGMENT]

THE COURT*

It is ordered that the opinion filed on November 5, 2003, be modified in the following particulars:

1. On page 4, in the paragraph at the top of the page, the first and second full sentences are modified to read:

Following a preliminary hearing, the magistrate denied a motion to dismiss. Petitioner was bound over to the trial court.

*VOGEL (C.S.), P.J., EPSTEIN, J., CURRY, J.

2. On page 5, the first two paragraphs are deleted and a new paragraph is added to read:

At the preliminary hearing, the magistrate is the finder of fact. “In making the determination of probable cause, the magistrates do not themselves decide whether the defendant is guilty. (See [*People v.*] *Slaughter* [(1984)] 35 Cal.3d [629] at p. 637; [*People v.*] *Uhlemann* [(1973)] 9 Cal.3d [662] at p. 667.) Rather, they simply decide whether a reasonable person could harbor a strong suspicion of the defendant’s guilt. In doing so, they may ‘weigh the evidence, resolve conflicts, and give or withhold credence to particular witnesses.’ (*Uhlemann, supra*, 9 Cal.3d at p. 668.) . . . In sum, the magistrate’s role is limited to determining whether *a reasonable person* could harbor a strong suspicion of the defendant’s guilt, i.e., whether such a person could reasonably weigh the evidence, resolve conflicts, and give or withhold credence to particular witnesses in favor of harboring such a suspicion.” (*Cooley v. Superior Court* (2002) 29 Cal.4th 228, 251.) “In ruling on a motion to dismiss made pursuant to section 995, the superior court sits merely as a reviewing court, without the power to judge credibility, resolve conflicts, weigh evidence, or draw its own factual inferences. (*People v. Laiwa* (1983) 34 Cal.3d 711, 718 [195 Cal.Rptr. 503, 669 P.2d 1278].)” (*People v. Hillhouse* (2003) 109 Cal.App.4th 1612, 1622-1623.) “““On review by appeal or writ . . . the appellate court in effect disregards the ruling of the superior court and directly reviews the determination of the magistrate holding the defendant to answer.””” (*People v. Superior Court (Bell)* (2002) 99 Cal.App.4th 1334, 1339, quoting *People v. Superior Court (Lujan)* (1999) 73 Cal.App.4th 1123, 1127.)

3. On page 10, the second sentence of the first full paragraph, beginning “The magistrate was required” is deleted.

4. On page 11, the first sentence in section III of the discussion is modified to read:

Finally, petitioner complains that the magistrate summarily denied his motion to dismiss the complaint without specifying reasons or a rationale.

There is no change in the judgment.